

**ST. REGIS MOHAWK TRIBAL COURT****ST. REGIS MOHAWK INDIAN RESERVATION**

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**Evelyn Sawyer****Eileen Sawyer****Appellant****-V-****Anthony Laughing****Defendant**

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**DECISION AND ORDER****Case No.: 12-LND-00004****PROCEDURAL HISTORY**

Eileen Sawyer, on behalf of her mother, Evelyn Sawyer, filed an appeal of a Land Dispute Tribunal Decision dated February 17, 2012 in St. Regis Mohawk Tribal Court on March 21, 2012. Ms. Eileen Sawyer it should be noted, has a Power of Attorney from her mother Ms. Evelyn Sawyer. Appellant is seeking a reversal of the Land Dispute Tribunal Decision and the parcel of land in dispute be returned to Ms. Evelyn Sawyer.

Following the filing of the appeal with the Court, a twenty day civil summons was issued on May 1, 2012 that was to be served upon the Defendant, Mr. Anthony Laughing, along with a copy of the complaint.

After multiple attempts by the Appellant to serve the summons and complaint upon Mr. Anthony Laughing, and also numerous attempts by the Court to contact Mr. Anthony Laughing, a Notice of Appearance was filed with the Court by Mr. Daniel Pease on November 13, 2012, indicating he is representing Mr. Anthony Laughing in the matter at bar.

Following a hearing in St. Regis Mohawk Tribal Court on November 14, 2012 in which all parties were in attendance a statement of issues was filed with the Court by Appellant in which Ms. Eileen Sawyer identified all of the arguments that she wished to pursue.

On February 25, 2014 the Court issued letters to all parties in the matter before the Court informing them that there would be a status conference held in St. Regis Mohawk Tribal Court on March 19, 2014. The status conference was held on March 19, 2014 to clarify issues and establish if further litigation was necessary to address issues that had been brought by the Appellant due to a portion of the audio record from the final Land Dispute Tribunal hearing being inaudible.

**FACTUAL BACKGROUND**

On February 7, 1948 Mrs. Elizabeth White wrote a letter to Ms. Sadie Sawyer in which she discusses an agreement where Mrs. White agreed to sell nine (9) acres of land to Ms. Evelyn Sawyer and her husband Mr. Harvey C. Sawyer (Ms. Sadie Sawyer's son) located on State Route

37 on the St. Regis Mohawk Indian Reservation for the price of \$150.00 Included with the letter is a hand drawn map of the parcel of property. *See*, Record February 7, 1948 Letter.

On August 12, 1958 in a letter from the St. Regis Mohawk Tribal Council to Mrs. Elizabeth White, the Chiefs of the St. Regis Indian Reservation asked if Mrs. White is still the owner of the property along Route 37 that neighbors Eugene Terrance. They asked for a prompt response as "our records do not show any transaction on the above mentioned property." *See*, Record August 12, 1958 Letter to Mrs. Elizabeth White.

On April 29, 1987 Mr. Harvey C. Sawyer and Ms. Evelyn Sawyer agreed to sell the property located on State Route 37, known as Lot #237, to Mr. Anthony Laughing for the amount of \$10,000 per acre. *See*, Record Sale Agreement April 29, 1987. Included in the sale agreement is a clause for Mr. Anthony Laughing to sell Ms. Evelyn Sawyer back one acre of land from this parcel after full payment, with the one acre location having to be agreed upon by both parties. *Id.* This sale agreement is signed by Mr. and Mrs. Harvey C. Sawyer and Mr. Anthony Laughing with Ms. Brenda Garrow as a witness.

Following the land sale between Mr. and Mrs. Harvey C. Sawyer, and Mr. Anthony Laughing for the parcel of property along State Route 37, there was a complaint made by Mr. Harvey E. Sawyer, the son of Mr. and Mrs. Harvey C. Sawyer about the sale of the parcel of property known as Lots #237 and #238. Mr. Harvey E. Sawyer (Son) claimed ownership to this property, however Ms. Carole Herne, the SRMT Tribal Clerk, in a letter to Mr. Harvey E. Sawyer (Son), stated that they could find no definitive record of him being the owner of the two lots. She notes in her letter to Mr. Harvey E. Sawyer (Son) that his name is on one map for Lot #237 but that there is no paperwork for that transaction in their records. *See*, Record March 16, 1988 Letter to Mr. Harvey E. Sawyer.

From April of 1987 through July of 1988, it appears that six (6) payments were made in the amount of \$10,000 (\$60,000 total) from Mr. Anthony Laughing to Mr. and Mrs. Harvey C. Sawyer in accordance with the April 1987 land sale agreement. *See*, Record Receipts for Land Payments. An initial payment of \$10,000 was made at the signing of the land sale agreement, and five subsequent payments were made with receipts acknowledging payment was received. *See*, Record Payment Receipts.

On February 28, 1989 Mr. Anthony Laughing wrote a letter stating that as of the date of the letter, Mr. and Mrs. Harvey C. Sawyer have not provided him with a certification of ownership and that Mr. Anthony Laughing will withhold the final payments until he receives ownership papers. *See*, Record February 28, 1989 Memorandum.

Next, in a letter dated September 28, 1989, Mr. Anthony Laughing is identified as the owner of Lot #237 by an ownership certification letter signed by SRMT Chief L. David Jacobs and SRMT Tribal Clerk Carol Herne. *See*, Record Ownership Certification September 28, 1989. In the letter Lot #237 is described as approximately ten (10) acres.

On July 15, 1997 Mr. Harvey E. Sawyer, the son of Mr. and Mrs. Harvey C. Sawyer signed a statement on Mohawk Nation Council of Chiefs letterhead, in which he claims that in July or

August of 1981, his parents transferred nine acres of land to him, which Mr. Sawyer claims is Lot #237. Mr. Sawyer claims in this signed declaration that he is the sole owner of this property. *See*, Record July 15, 1997 Harvey E. Sawyer Statement. This appears to be the same property which Evelyn and Harvey C. Sawyer “sold” to Mr. Anthony Laughing.<sup>1</sup>

On the same day, July 15, 1997, Ms. Evelyn Sawyer signed a statement also on Mohawk Nation Council of Chiefs letterhead, in which she states that Mr. Anthony Laughing is not the rightful owner of Lot #237. Ms. Sawyer also claims that Mr. Laughing was not to make any improvements on the land in question until full payment had been received. *See*, Record Evelyn Sawyer Statement July 15, 1997. However, it should be noted that this condition was not written into the contract between Mr. and Mrs. Harvey C. Sawyer and Mr. Anthony Laughing.

On July 31, 1997 an ownership “certification letter” was signed by former SRMT Tribal Clerk Ms. Carol Herne stating that Mr. and Mrs. Harvey C. Sawyer are the owners of Lot #237. *See*, Record Certification of Ownership July 31, 1997. It can be noted that there are no SRMT Tribal Chiefs signatures on the document, and it appears there was no Use and Occupancy Deed issued to Mr. and Mrs. Harvey C. Sawyer for Lot #237. Further, there is no Use and Occupancy Deed for Harvey E. Sawyer (son), or Anthony Laughing either.

On August 10, 2011 a complaint was filed with the St. Regis Mohawk Tribe Land Dispute Tribunal by Ms. Eileen Sawyer on behalf of her mother Ms. Evelyn Sawyer regarding Lot #237. The Complainant named Mr. Anthony Laughing as the Defendant. *See*, SRMT Land Dispute Tribunal Record.

The initial hearing for this matter was heard by the Land Dispute Tribunal on January 10, 2012 and the final hearing was held on January 24, 2012. Following the final hearing a decision was rendered by the Land Dispute Tribunal on February 17, 2012. *Id.*

Following the Land Dispute Tribunal decision in the matter of Sawyer v Laughing an appeal was filed with the St. Regis Mohawk Tribal Court by Ms. Eileen Sawyer on behalf of her mother Ms. Evelyn Sawyer. *See*, Record Notice of Appeal March 21, 2012.

### **APPELLANT’S ARGUMENT ON APPEAL**

The Appellant’s arguments in the matter before the Court include many points which must be discussed in detail to determine an equitable decision to both parties in the case at bar. Appellant claims that the St. Regis Mohawk Tribe Land Dispute Tribunal (hereinafter SRMT LDT), erred in interpreting the April 29, 1987 sales agreement between Mr. and Mrs. Harvey C. Sawyer, and Mr. Anthony Laughing. *See*, Record Statement of Issues December 13, 2012. Appellant contends that they are the rightful owners of Lot #237. Appellant insists that the Defendant, Mr. Anthony Laughing, never paid the balance of \$30,000 that would settle the sale agreement debt, and was prohibited from developing the property known as Lot #237 until full payment had been made to Mr. and Mrs. Harvey C. Sawyer. *Id.*

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<sup>1</sup> It can be noted that in the record of this case there was some issue raised at one time if Mr. and Mrs. Harvey C. Sawyer were enrolled members of the St. Regis Mohawk Tribe

Appellant further asserts that the SRMT LDT erred in interpreting the sales agreement by not properly considering the condition in the sales agreement for Mr. Anthony Laughing to sell back one acre to Ms. Evelyn Sawyer, and that this stipulation had not been completed. *Id.*

The Appellant also contends that the SRMT LDT erred in accepting oral testimony by the Defendant's brother Mr. Gerald Laughing, in which Mr. Laughing states that the balance of \$30,000 was paid to Mr. Harvey C. Sawyer by Ms. Ida Laughing (Defendant's mother). *Id.* Further expanding on this argument the Appellant states that the oral evidence given by the witnesses regarding this alleged lump sum payment was inconsistent, but not captured for the record due to problems with the recording equipment at the final hearing before the SRMT LDT. *Id.*

Appellant maintains that a land ownership certification dated September 29, 1989 and signed by then SRMT Tribal Chief L. David Jacobs and SRMT Tribal Clerk Carol Herne was improperly relied upon by the SRMT LDT and given too much weight in their decision. *Id.*

The Appellant holds that the SRMT LDT erred in failing to place any weight upon statements which former SRMT Tribal Clerk Carol Herne made post the September 29, 1989 ownership certification letter. *Id.*

Appellant claims that the SRMT LDT failed to give proper weight to issues that were raised by the Appellant during the SRMT LDT hearings regarding the relationship between former SRMT Tribal Chief L. David Jacobs, and the Defendant, Mr. Anthony Laughing. *Id.*

The Appellant alleges that the SRMT LDT failed to properly weigh what Ms. Sawyer claims was a "hostile relationship between respondent Laughing and Tribal Clerk Carol Herne." *Id.* The Appellant claims that there is no reason to believe that the Tribal Clerk would proceed in a manner inconsistent with the ethics of her office.

The Appellant further contends that it was improper for SRMT LDT members Ms. Rowena General and Ms. Darlene Francis to hear the matter before them, claiming that there was a conflict of interest. The Appellant claims that Ms. Rowena General supported the Respondent Mr. Anthony Laughing during a time of community strife in Akwesasne during the 1980's, and this presents a conflict. *See*, Record Statement of Issues December 13, 2012. The Appellant also insists that witness testimony was not heard and therefore not part of the record, due to conflict of interest issues. *Id.* Appellant alleges that Ms. Darlene Francis' refusal to recuse herself from the SRMT LDT hearing resulted in the absence of testimony by Ms. Joyce King. The Appellant argues that the witness in question was prevented from testifying and that this issue could be resolved on appeal. *Id.*

### LAND SALE AGREEMENT

On February 7, 1948 Ms. Elizabeth White, indicated in a letter to Ms. Sadie Sawyer, that she is in the process of selling a parcel of property to Mr. and Mrs. Harvey C. Sawyer. *See*, Record February 7, 1948 Letter. In the letter the property is described as being situated on State Route 37, and that it contains approximately nine (9) acres. *Id.* Included at the bottom of the letter is a hand drawn map of the property. *Id.*

The April 29, 1987 land sale agreement between Mr. and Mrs. Harvey C. Sawyer and Mr. Anthony Laughing called for nine (9) payments to be made, at the rate of \$10,000 per acre for Lot #237 and #238. *See*, Record April 29, 1987 Sale Agreement. This would seem to indicate that the total acreage for these lots consisted of nine (9) acres. This coincides with the February 7, 1948 letter written by Ms. Elizabeth White, who also described the property as being nine (9) acres when she sold it to Mr. and Mrs. Harvey C. Sawyer. *See*, Record February 7, 1948 Letter.

The Court calls attention to the fact that in a subsequent document included in the SRMT LDT record, the Appellant Ms. Evelyn Sawyer, claimed the amount of acreage said to be contained in Lots #237 and #238 is actually eleven (11) acres. *See*, Record Evelyn Sawyer Statement July 15, 1997 on Mohawk Nation Council of Chiefs Letterhead.

The actual amount of acreage for the lots in dispute differ at various times and documents in the record before the Court. The Court must inspect the true dimensions of these lots with careful consideration, and upon so doing the Court has determined that the original acreage of the land in question can total no more than nine (9) acres as stated in the February 7, 1948 letter from Ms. Elizabeth White to Ms. Sadie Sawyer. Nothing in the record before the Court shows that there has been any increase in acreage for the property in question that can be substantiated from the time of the original sale agreement of February 7, 1948 up to this day.

The Court notes again that there has been no SRMT Use and Occupancy Deed issued for this property in the record, nor has there been any agreement providing a meets and bounds description of the property in dispute.

The Appellant contends that the Defendant, Mr. Anthony Laughing, was prohibited from making developments on the land that he was purchasing from the Appellant, Ms. Evelyn Sawyer, until full payment of the amount agreed upon in the land sale agreement of April 29, 1987 had been satisfied. *See*, Record Statement of Issues December 13, 2012. The Court will address this argument to clarify the issue of land holding origins and customs in Akwesasne.

In a historic sense the issue of land holding origins date back to the original settlement of St. Regis and its first inhabitants. The first permanent settlers of Akwesasne adopted a system of land ownership which was based in large part on the system of land holding and ownership they probably brought with them when they migrated to Akwesasne from Kahnawake

One of the historic hallmarks of land ownership in Akwesasne is based upon a customary practice that allowed for those who first cultivated a plot, then became possessor of that parcel. *See, White v White 10-LND-00009 at pg. 6*. This was historic practice which was a traditional custom in the settlement of Akwesasne. The argument that there is no ownership of property until it is paid for clearly does not coincide with the traditions and customs in Akwesasne. In fact, upon a study of the history of land holding origins in Akwesasne, developing land was precisely what proved your ownership of that property. The Appellant has failed to show that developing property until it is paid for is a historic custom.

The Court observes that the use of traditional Mohawk customs and laws is not only permitted, but preferred as evidenced by this excerpt from the St. Regis Mohawk Tribe Civil Code. "Unwritten Mohawk laws, and written and unwritten Mohawk customs, traditions and practices, whenever such Mohawk laws, customs, traditions or practices are found by the Mohawk Court to be (i) well-established within the Tribe and recognized by Tribal members, (ii) applicable or relevant to the dispute in issue, and (iii) not inconsistent with due process and other rights established under Tribal law." See, SRMT Civil Code V (A) (3).

Determining historic land holding origin patterns and the customs which accompanied them have helped to highlight the way that land disputes are settled by the St. Regis Mohawk Tribal Court. See, White v White 10-LND-00009 at pg. 1, and See Point v Peters 10-LND-00005 at pg. 1. As evidenced from the preceding discussion, the argument that there be no development of property until full payment has been made is historically inaccurate. That argument also does not fall in line with the guidelines that are provided by the SRMT Civil Code.

The Court also notes that there was no clause in the April 29, 1987 land sale agreement that would have precluded Mr. Anthony Laughing from developing the property which he was in the process of purchasing from Mr. and Mrs. Harvey C. Sawyer. Mr. Anthony Laughing's development of the property while still in the process of completing payment is also not contradictory to the historical practices of land holding and ownership in Akwesasne, as evidenced by the prior discussion on these Akwesasne customs. The Court additionally recognizes that because the SRMT Civil Code not only allows but prefers use of Mohawk traditions and customs, the Respondent also acted in accordance with SRMT law.

Based upon all of this, the Court finds there is nothing in the record that would substantiate the argument that the Defendant, Mr. Anthony Laughing, was not in his right to develop the property he was in the process of purchasing.

In the Land Sale Agreement entered into between Mr. and Mrs. Harvey C. Sawyer and Mr. Anthony Laughing, there is a condition in which Ms. Evelyn Sawyer has the option to buy back one (1) acre of land from Mr. Anthony Laughing, "Anthony Laughing further agrees to sell Evelyn Sawyer one acre back for the sum of \$10,000 (ten thousand U.S. dollars at any time after full payment.) The location of the one acre to be agreed upon by both parties." See, Record Land Sale Agreement April 29, 1987.

The Appellant claims that the term which allows for Ms. Evelyn Sawyer to purchase back one (1) acre of land from Mr. Anthony Laughing for the price of \$10,000 has not been satisfied. The Court finds that the SRMT LDT correctly identified this condition in the land sale agreement and acknowledged the opportunity for the Appellant to exercise this clause in their decision. See, SRMT LDT Decision dated February 17, 2012. While Appellant argued there was an error made by the SRMT LDT in considering this issue, the Court believes the appropriate action was taken by the SRMT LDT when they addressed this in their decision. Therefore, the Appellant still has the "buy back" option available to them if they wish to pursue it in accordance with the terms provided in the original April 29, 1987 land sale agreement. (E.g. There must be an agreement as to location and payment of the \$10,000.

In the notice of appeal, the Appellant identified that a witness that was to testify on her behalf was not given the opportunity to do so because the potential witness, Ms. Joyce King, argued that there was a conflict of interest between herself and an SRMT LDT panel member, Ms. Darlene Francis.

On June 20<sup>th</sup>, 2014 the Court issued a decision in which we found that there was no conflict of interest between Ms. King and Ms. Francis. However, the Court did acknowledge that the Appellant should have had the opportunity for Ms. Joyce King to testify “that because potentially highly relevant evidence was not provided because Ms. Sawyer’s witness was not afforded the opportunity to proffer evidence, the Court orders that the Appellant be given an opportunity to present Ms. Joyce King in St. Regis Mohawk Tribal Court.” *See*, Decision on Witness Testimony June 20<sup>th</sup>, 2014.

The Court held an evidentiary hearing on July 23<sup>rd</sup>, 2014 so that Ms. Joyce King could offer her testimony as a witness on behalf of the Appellant. During this hearing Ms. King testified that she recalled a public notice that was published in the Indian Time newspaper in which former SRMT Tribal Clerk Carol Herne stated that the property which is in dispute was owned by Harvey and Evelyn Sawyer, not Anthony Laughing. *See*, Audio Record July 23<sup>rd</sup>, 2014.

Following Ms. King’s testimony regarding this potential public notice, the Court informed all of the parties in this matter that research would be done by the Court to attempt and locate this alleged public notice.

Initially the Court utilized the NYS Historic Newspapers website, which has digitally archived all issues of Indian Time newspaper from its inception in 1983. Upon extensive review of this website consisting of many hours, the Court found no evidence of this alleged public notice regarding the property in dispute in this matter.

In order to be completely thorough, the Court then went to the Akwesasne Library to access the physical copies of Indian Time Newspaper, in order to ensure that all possibilities were exhausted. After several days of research at the library, the Court again found no such public notice in the Indian Time Newspaper.

The Court would like to note however, that even in light of not being able to locate this alleged public notice, a statement made by former Tribal Clerk Carol Herne stating that Harvey and Evelyn Sawyer are the owners of the property in dispute and not Anthony Laughing would not be enough to overturn the decision of the SRMT LDT decision.

### **TESTIMONY AT LAND DISPUTE TRIBUNAL**

The Appellant argues that during hearings held by the SRMT LDT, the LDT erred in accepting witness testimony regarding the absence of receipts for \$30,000 that the Defendant Mr. Anthony Laughing alleges was made to Mr. Harvey C. Sawyer.

In the record before the Court, this \$30,000 was apparently the balance of money that was owed by Mr. Anthony Laughing to the sellers, Mr. and Mrs. Harvey C. Sawyer. This is based upon documents in the record indicating that prior to the alleged payment of \$30,000, six (6) \$10,000

payments had been made by Mr. Anthony Laughing, and accepted by Mr. and Mrs. Harvey C. Sawyer. *See*, Record Payment Receipts.

In the record before the Court there are receipts that total \$60,000 which includes the initial \$10,000 payment that was made by the Defendant Mr. Anthony Laughing at the execution of the April 29, 1987 land sale agreement entered into by Mr. and Mrs. Harvey C. Sawyer and Mr. Anthony Laughing. *Id.*

Before continuing, the Court must acknowledge that there is a missing portion of the record that the SRMT LDT developed, specifically that the audio recording from the final SRMT LDT hearing is inaudible, therefore leaving the record incomplete. This missing part of the record has been brought up as an issue by the Appellant, and the Court recognizes this missing portion of the record is problematic.

The Court can however rely upon witness testimony that was provided for the record during the SRMT LDT initial hearing that is included with the record before the Court.

In oral testimony given by Mr. James Laughing at the initial SRMT LDT hearing, Mr. Laughing stated that he gave \$30,000 to his brother Mr. Anthony Laughing. Following this, Mr. James Laughing claimed that the money was given to his mother, Ms. Ida Laughing. According to Mr. James Laughing, upon receipt of the \$30,000 in cash, Ms. Laughing was driven to Kahnawake by Mr. Gerald Laughing's limo driver, (Gerald and James Laughing are the brothers of the Respondent Mr. Anthony Laughing) to deliver payment of \$30,000 to Mr. and Mrs. Harvey C. Sawyer. *See*, SRMT LDT Initial Hearing Recording January 10, 2012.

Mr. Gerald Laughing testified that his mother Ms. Ida Laughing had a receipt indicating that the final payment of \$30,000 had been made to Mr. Harvey C. Sawyer. Mr. Gerald Laughing further stated that a copy of all of the payment receipts made by Mr. Anthony Laughing to Mr. and Mrs. Harvey C. Sawyer were submitted to former SRMT Tribal Clerk Carol Herne. *See*, Record SRMT LDT Initial Hearing Recording January 10, 2012.

There is no receipt for the alleged final payment of \$30,000 in the record before the Court, and testimony given by witnesses at the initial SRMT LDT hearing is questioned by the Appellant as having no credence, given the fact that there is no documentation to back up this assertion.

The Court must address the validity of the testimony given by the witnesses in the record that is before it, and the weight the SRMT LDT gave that oral testimony in determining its decision. Along with considering the Appellant's arguments regarding the accuracy of testimony given on behalf of the Defendant, the Court must also examine the accuracy of testimony that was given by the Appellant.

Appellant argues that the SRMT LDT gave too much consideration for the oral testimony provided by Mr. James Laughing and Mr. Gerald Laughing that a \$30,000 final payment was made to Mr. and Mrs. Harvey C. Sawyer. While the Court understands the Appellant argument, the Court does not view that this oral testimony weighed so heavily in favor of the Defendant that it was considered as irrefutable fact when the LDT made their decision. Ultimately, the Court sees the



SRMT LDT consideration of this testimony as one part of all of the oral testimony that was provided by all of the witnesses, which led the LDT to determine that satisfactory compensation had been made to Mr. and Mrs. Harvey C. Sawyer by Mr. Anthony Laughing.

The Court notes that the Appellant was given sufficient time to provide their own testimony as well, and that there were inconsistencies in oral testimony provided by the Appellant as well. During the initial SRMT LDT hearing in this matter, Ms. Evelyn Sawyer stated that she had received checks in the mail from Mr. Anthony Laughing as payments due for the purchase of Lot #237 and #238. *See*, Record SRMT LDT Initial Hearing Recording January 10, 2012.

Upon further questioning about the use of checks by Mr. Anthony Laughing in making payments to Mr. and Mrs. Harvey C. Sawyer, this was dismissed, due to Ms. Evelyn Sawyer later recalling that in fact Mr. Anthony Laughing always paid in cash and a receipt for those payments were signed by Ms. Evelyn Sawyer. *See*, Record SRMT LDT Initial Hearing Recording January 10, 2012. Receipts which are part of the record.

Another inconsistency worth noting is that on the occasion of the alleged \$30,000 final payment, this money was apparently delivered to Mr. Harvey C. Sawyer. This apparently was disagreeable to the Appellant, as she insisted that all payments made were to be to her alone. *See*, Record SRMT LDT Initial Hearing Audio Recording January 10, 2012. Although there is relatively little more in the record on this issue, it is cumulative to the rest of the evidence regarding the inconsistencies with respect to payments/receipts under the agreement.

The Court has examined all of the witness testimony that is in the record before it. Again, the Court acknowledges that any testimony given at the final SRMT LDT hearing is not a part of the record before the Court as that audio recording is unintelligible.

While the Court recognizes the Appellant's argument as to the validity and weight given the testimony of Mr. James and Mr. Gerald Laughing respectively, the absence of a receipt for the final \$30,000 payment does not show that the SRMT LDT didn't consider this aspect. In fact, weighing all of the oral testimony given by every witness and interested party is precisely what occurred. This is inclusive of inconsistent testimony that was provided by the Appellant at the SRMT LDT initial hearing. The totality of the documentation (receipts which were provided) in the record along with oral testimony is what compels the Court to agree with the SRMT LDT that satisfactory compensation was made for Lot #237.

#### **SEPTEMBER 28, 1989 LAND OWNERSHIP CERTIFICATION**

Appellant also raises in this appeal that a document in the record before the Court was given too much weight by the SRMT LDT. This document was a letter in which former SRMT Tribal Chief L. David Jacobs and former SRMT Tribal Clerk Carol declared that Mr. Anthony Laughing was the owner of the property in dispute in this matter. *See*, Record Land Ownership Certification dated September 28, 1989. Appellant argues that this ownership certification was invalid. *See*, Record Statement of Issues December 13, 2012.

The document in question is an apparent attempt at certifying the Defendant, Mr. Anthony Laughing as the owner of Lot #237, the parcel of property that is in dispute in the matter at bar. The Court notes that under traditional custom of the St. Regis Mohawk Tribe, any official document bearing the authority of the SRMT requires the signature of two out of the three current SRMT Tribal Chiefs was presumptively valid. *See*, SRMT Tribal Procedures Act IX (3).<sup>2</sup>

The Court acknowledges that the document in question was not signed by two (2) out three (3) SRMT Tribal Chiefs at the time. Only the signature of one Chief, Mr. L. David Jacobs, and SRMT Tribal Clerk Ms. Carol Herne appear. This does not follow the standard method that would traditionally give an instrument the official authority of the St. Regis Mohawk Tribe. *Id.*

There is another document in the record signed by former SRMT Tribal Clerk Ms. Carol Herne, declaring Mr. and Mrs. Harvey C. Sawyer the owners of the property known as Lot #237. *See*, Record Ownership Certification July 31, 1997. This is another example of a document being part of the record that does not follow the procedure of an authority bearing instrument of the St. Regis Mohawk Tribe. *Id.*

At this time the Court must address that there was a third claim of ownership for Lot #237 made by Mr. Harvey E. Sawyer (Son). *See*, Record Harvey E. Sawyer Statement on Mohawk Nation Council of Chiefs Letterhead July 15, 1997. In this sworn statement, Mr. Harvey E. Sawyer, son of Mr. and Mrs. Harvey C. Sawyer, claimed that in July or August of 1981 his parents transferred ownership of Lot #237 and #238 to him. *Id.*

Given that in the record there are three individuals who claim ownership of Lot #237 and #238, the Court does not agree that the September 28, 1989 ownership certification was given any more consideration than the certification of ownership letter declaring Mr. and Mrs. Harvey C. Sawyer the owners of the property known as Lot #237. Both ownership certification letters were submitted for the record, therefore the Court does not view that one document was given more weight than the other. In light of the fact that there was an additional claim of ownership made by Mr. Harvey E. Sawyer, the Court finds that the SRMT LDT properly weighed the ownership certification letters in making their decision.

The Court again notes that in all of the evidence submitted into the record, there are no SRMT Use and Occupancy Deeds in the record for either the Appellant or Defendant. The fact that there is no SRMT Use and Occupancy Deed from the apparent sale of this property from Ms. Elizabeth White to Mr. and Mrs. Harvey C. Sawyer in 1948 is interesting to note. Nearly forty (40) years passed between the original sale of Lot #237 by Ms. Elizabeth White to Mr. and Mrs. Harvey C. Sawyer, and the subsequent April 29, 1987 sale to Mr. Anthony Laughing. No accompanying SRMT Use and Occupancy Deeds solidifies the Court's view that the SRMT LDT properly weighed both the ownership certification letters.

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<sup>2</sup> This codifying what had been a custom for SRMT action regarding 2 of 3 SRMT Chiefs for action to be considered official.

The Appellant alleges that there was an improper relationship between the Defendant, Mr. Anthony Laughing, and former SRMT Tribal Chief L. David Jacobs. *See*, Record Statement of Issues December 13, 2012. The Appellant argues that because of an alleged interest by Mr. Jacobs on the behalf of Mr. Anthony Laughing, the September 28, 1989 Ownership certification letter that was signed by Mr. L. David Jacobs and Ms. Carol Herne is invalid. *Id.*

As the Court has previously discussed, the September 28, 1989 ownership certification letter signed by Mr. L. David Jacobs and Ms. Carol Herne had no more bearing on the SRMT LDT decision than the July 31, 1997 Ownership Certification (which listed the Appellant as the owner of Lot #237) signed by Ms. Carol Herne, former SRMT Tribal Clerk. The fact that there are two conflicting documents attempting to certify either party in the matter at bar as the owner of Lot #237 is immaterial as the Court has found that they were not executed according to policies set out by the SRMT Tribal Procedures Act.<sup>3</sup> The Court finds that if neither document had been submitted for the record, the SRMT LDT decision would have been the same.

The Court notes that in the Appellant's statement of issues the SRMT LDT "failed to properly weigh or give Appellant opportunity to address its conclusion regarding the hostile relationship between Respondent Laughing and Tribal Clerk Carol Herne. The Appellant has no reason to believe that the Tribal Clerk would proceed in a manner inconsistent with the ethics of her office." *See*, Record Statement of Issues December 13, 2012. This would apparently include that the Tribal Clerk had signed two contradictory statements regarding ownership of the parcels. (E.g. Anthony Laughing/Harvey and Evelyn Sawyer.)

The Court notes that the Appellant fully accepted that one SRMT Tribal official, former SRMT Tribal Clerk Carol Herne acted in accordance with the professional and ethical responsibilities of her position. On the other hand, the Appellant makes an accusation of professional and ethical misconduct on the part of another SRMT official, Mr. L. David Jacobs, former SRMT Tribal Chief, in his actions involving his position.

The Appellant also stated during the initial SRMT LDT hearing that Mr. L. David Jacobs and Mr. Anthony Laughing were convicted of criminal charges and sentenced to serve prison terms. *See*, Record Initial SRMT LDT Hearing Audio Recording January 10, 2012.

While this is common knowledge in the community of Akwesasne, the Court must note that the Appellant has made no showing that the charges and subsequent sentences served by Mr. L. David Jacobs, and Mr. Anthony Laughing had any direct impact or effect on the land dispute issue between the Appellant and Respondent.

Tempering this is to realize that the respondent did make payments pursuant to the April 29, 1987 land sale agreement, and these, according to the SRMT LDT, totaled at least \$90,000. Therefore, if there was an improper relationship between the Respondent and the former SRMT Tribal Chief, it does little to explain why payments were made pursuant to the agreement.

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<sup>3</sup> Which in fact codified existing custom of the SRMT Council requiring 2 of 3 SRMT Chiefs for official action.

The Court must determine the merits of any argument made before it based upon the evidence represented in the record. In this instance there is no factually based material supporting the accusation of impropriety against Mr. Jacobs by the Appellant. In fact, in light of no supporting evidence of this alleged improper relationship in the record, the Court points again to the fact that payments were regularly made to the Appellant.

Therefore, if the behavior of Ms. Carol Herne in her duties as the SRMT Tribal Clerk are presumptively valid, then without evidence to the contrary, the actions of Mr. L. David Jacobs are also deemed to have been in compliance with his position and duties in this matter. Based upon this examination the Court finds that the SRMT LDT properly weighed the argument of an improper relationship between the Respondent and former SRMT Tribal Chief Mr. L. David Jacobs.

### **INTERESTED PARTY'S ABSENCE**

At this time the Court must address an essential part of the record which has not been fully examined by the SRMT LDT nor either of the parties in the matter at bar who is an interested party. The SRMT LDRO defines an interested party as "Interested Persons – people having an interest or claim in property subject to dispute, or who might have information relevant to determining the facts of a particular case". *See*, SRMT LDRO IV (F). Mr. Harvey E. Sawyer, the son of Mr. and Mrs. Harvey C. Sawyer and the brother of Ms. Eileen Sawyer, appears to be what the Court deems an "interested party" to the case at bar.

An interested party that is absent from proceedings regarding a Land Dispute has been addressed by this Court previously. *See*, Laffin v Papineau 12-LND-00003 pg. 4, Oakes v Oakes 11-LND-00008 pg. 7. As the Court has found previously, the absence of an interested party has a potential effect on the outcome of a decision that the Court renders. This is because the interested party absent from the hearing has the right to be heard by the Court to protect their interests in the case. Without the presence of this party, there can be no complete relief granted to the missing party, as they have made no arguments on their own behalf, which is something the Court must preserve them an opportunity to do.

Mr. Harvey E. Sawyer's (Son) absence from the SRMT LDT proceedings did not mean that the matter would have to be automatically dismissed. The Court finds however, that there are multiple factors which make his interest in the matter at bar crucial to answering certain questions in regard to this case, in order to issue a complete decision in this matter.

Firstly, on October 13, 1987 there is a transmittal slip on St. Regis Mohawk Tribe heading in which Mr. Harvey E. Sawyer (Son) contacted former SRMT Tribal Clerk Ms. Carol Herne regarding property on State Route 37 which he apparently said was sold but that he was unsure who it was sold to. *See*, Record Transmittal Slip October 13, 1987.

This communication is the first in the record in which there is an indication that Mr. Harvey E. Sawyer (Son) should have been made a necessary party, as he is claiming ownership of the property that is the basis of the dispute in the matter at bar. Based upon this initial claim by Mr.

Harvey E. Sawyer (Son), the Court acknowledges that Mr. Harvey E. Sawyer (Son) is a necessary party who should have been involved in the SRMT LDT proceedings.

Mr. Harvey E. Sawyer, on July 15, 1997 made another declaration claiming ownership of the property known as Lot #237 in a sworn affidavit prepared by the Mohawk Nation Council of Chiefs. *See*, Record Affidavit Mr. Harvey E. Sawyer July 15, 1997. In this instrument Mr. Harvey E. Sawyer claims that in July or August of 1981 his parents, Mr. and Mrs. Harvey C. Sawyer, transferred nine acres of land to him, which is the location of Lot #237. *Id.*, the property in dispute in the matter at bar.

The Court notes that there is nothing in the record before it in which Mr. Harvey E. Sawyer is the owner of record in regard to Lot #237. However, the Court must address the claim made by Mr. Harvey E. Sawyer, as his assertion makes him an interested party in the matter.

In order to fully grant relief in rendering a decision in this matter, the Court would be ignoring a completely separate argument that is noted in the record. The reason for Mr. Harvey E. Sawyer (Son) not being included or involved in the SRMT LDT process is unknown, but again, the Court fully recognizes that he is an interested party who has the right to be heard.

In accordance with prior decisions, the SRMT Court leaves open the door for this party, Mr. Harvey E. Sawyer, to present his arguments in the matter regarding the property known as Lot #237. *See, Oakes v Oakes* 11-LND-00008 pg. 7, *Laffin v Papineau* 12-LND-00003 pg. 4. This will fully ensure that a fair and equitable process is afforded to Mr. Harvey E. Sawyer, as well as the Appellant, Ms. Eileen and Ms. Evelyn Sawyer, and the Defendant, Mr. Anthony Laughing.

The Court at this time will also present the issue of "missing witness inference." This term refers to the fact that "a specific person was not called as a witness permits, but does not require, an inference that had he/she been called his/her testimony would not have supported the (People's/defense's) position on that issue."<sup>4</sup> *See also, Devito v. Feliciano*, 22 N.Y.3d 159 (N.Y. 2013). In other words, had the Appellant presented Mr. Harvey E. Sawyer as a witness during the SRMT LDT proceedings, according to two documents provided in the record, Mr. Harvey E. Sawyer (Son) would likely have provided testimony that may have contradicted the Appellant's, and/or Respondent's claim of ownership of Lot #237.

Therefore, considering that there is a documented third claim of ownership for Lot #237 by Mr. Harvey E. Sawyer (Son), the Court recognizes that Mr. Harvey E. Sawyer is not only an interested party to this matter, but his potential claim of ownership is one the Court must recognize.

The Court reiterates that the Appellant's and Respondent's failure to bring forth Mr. Harvey E. Sawyer is an instance of a missing witness inference. Appellant neglecting to bring forth

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<sup>4</sup> Sample Jury Instructions Missing Witness - If either party failed to produce a witness, who was available to the party and whose testimony would clarify the events at issue, the jury may draw an adverse inference that the testimony of that witness would have been unfavorable to that party. Where, however, the missing witness is as likely to favor one party as the other, then the jury is free to infer that the witness' testimony would have been unfavorable to either side, to both sides, or could draw no inference at all. Whether a witness is available depends on all the facts and circumstances bearing upon the witness' relation to the party, and not merely on physical presence or accessibility.

Mr. Harvey E. Sawyer for the SRMT LDT proceedings prohibits the ability to fully satisfy the dispute before the Court.

The SRMT LDT's failure to address the issue of Mr. Harvey E. Sawyer's (Son) claim that is clearly part of the record that was developed by the LDT was an issue that should have been investigated and answered fully in their decision.

Therefore, the St. Regis Mohawk Tribal Court finds that Mr. Harvey E. Sawyer (Son) is a necessary party and/or interested person to the matter at bar. If he so wishes to pursue his ownership claim regarding Lot #237, the St. Regis Mohawk Tribal Court will hear his arguments on this issue. This decision should have no negative effect on his ability to do so.

### CONCLUSION

As the Court reaches its conclusion in this matter, it is important to note again that the weighing of the evidence in the record is based upon the record that has been developed by the SRMT LDT as required in the SRMT LDRO. *See*, SRMT LDRO XV (B) (2). Though arguments were made by the Appellant that certain evidentiary submissions were given more consideration than others, the Court reiterates that any decision the Court renders is based on the entirety of evidence that is in the record, not simply one specific document.

The Court reminds the parties in this matter that the Appellant in this case has the burden of proof, which is to make it clear by a preponderance of the evidence that "superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other." *See*, SRMT Rules of Civil Procedure XX (A) (B).

In close examination of the April 29, 1987 sale agreement between Mr. and Mrs. Harvey C. Sawyer and Mr. Anthony Laughing, the Court heard argument by the Appellant that stipulations in that contract were not met by the Defendant Mr. Anthony Laughing. One of those contentions is that there was to be no development of the property until full payment was made for Lot #237.

Another is the reference to a clause calling for the "buy back" for a one (1) acre parcel located within Lot #237, by Ms. Evelyn Sawyer from Mr. Anthony Laughing. The Appellant argued that this stipulation was never completed and that the SRMT LDT did not address this.

The Court reaffirms the SRMT LDT 'condition' in their decision, that if the Appellant chooses, they have the right to invoke the "buy back" condition of the land sale agreement in accordance with the terms provided for in that instrument, but both parties must agree on the location of the one (1) acre as provided in the agreement.

The Appellant's argument that development of the parcel of property known as Lot #237 by Mr. Anthony Laughing was prohibited until full payment was made to Mr. and Mrs. Harvey C. Sawyer was taken into consideration and carefully examined. As the Court previously stated there are traditional customs and practices that have occurred in Akwesasne regarding land holding

origins and land ownership since the first permanent settlers arrived in St. Regis. See, White v White 10-LND-00009 pg. 1, Point v Peters 10-LND-00005 pg. 1.

These traditional customs were not violated by Mr. Anthony Laughing. There was also no violation of the contract which the Respondent and Appellant entered into on April 29, 1987 because there was no clause in the agreement which prohibited Mr. Anthony Laughing from developing the property until full payment was made.

Therefore, the Court finds that the Respondent was within his rights to develop Lot #237 while he was in the process of purchasing the property.

The Appellant argued that there was inconsistent testimony provided regarding the alleged \$30,000 final payment that the Defendant's brothers, Mr. Gerald Laughing, and Mr. James Laughing testified was made to Mr. Harvey C. Sawyer.

The Court has found that there was inconsistent testimony provided by the Appellant regarding payment methods received by her from the Defendant, Mr. Anthony Laughing. The Court does not see this as a deliberate attempt by the Appellant to misrepresent the facts. However, the Appellant's assertion that testimony provided on behalf of the Defendant was inconsistent, forces the Court to recognize that there was variable and inconsistent testimony provided by the Appellant as well. Again, the Court and SRMT LDT has taken all of the testimony provided for at their disposal, and considers it all as part of the record.

As a result of this, the Court finds that there has been no evidence submitted to the Court for this appeal to overturn the SRMT LDT decision regarding compensation for Lot #237. In looking at all of the evidence surrounding monetary payments for this property the Court sees a pattern of payments made by Mr. Anthony Laughing to Mr. and Mrs. Harvey C. Sawyer indicating there was a continuing effort to make full payment in satisfaction of the land sale agreement of April 29, 1987.

Therefore, the Court agrees with the SRMT LDT that compensation in the amount of \$90,000 was made by the Respondent to the Appellant, in full satisfaction of the Land Sale Agreement of April 29, 1987.

The Appellant's argument that too much weight was given to the September 28, 1989 ownership certification by the SRMT LDT has also been given serious consideration. The Court finds that there is nothing in the Court's review of the SRMT LDT decision that this single piece of evidence was weighed more than the other

As the Court stated previously, all submissions that are made for the record are given proper consideration and the Court finds that the SRMT LDT considered the September 28, 1989 certification document stating Mr. Anthony is the owner of Lot #237 with as much scrutiny as the July 31, 1997 Ownership Certification in which Mr. and Mrs. Harvey C. Sawyer are the stated owners of Lot #237 and #238.

The fact that there are two such documents in the record only means that the consideration and weight given to either document must be contrasted with the other evidentiary material that is in the record before it. Upon this examination the Court does not find that the September 28, 1989 ownership certification was given any more relevance than any other submission that is in the record.

In addressing the Appellant's assertion that there was an improper relationship between the Defendant Mr. Anthony Laughing, and former SRMT Tribal Chief, Mr. L. David Jacobs, the Court again must consider what is in the record before it.

Although the implication that a SRMT Tribal Official acted in an unethical manner is one to be taken with the most serious forethought, there is the general law provision that one is "innocent until proven guilty." This doctrine in tandem with the record before it does not show any substantiated evidence of impropriety between Mr. Anthony Laughing and Mr. L. David Jacobs, with respect to this specific land dispute case. In fact, the land dispute tribunal and SRMT LDRO provided Appellant an opportunity to challenge the Respondent's occupancy of the parcel in question, and to 'undo' any impropriety if they should find any. *See*, SRMT LDRO and Hathaway v Thomas 12-LND-00007.

Further, based upon the lack of such evidence of wrongdoing, the Court again mentions that the Appellant in a statement of issues filed with the Court, asserts that "the Appellant has no reason to believe that the Tribal Clerk would act in a manner inconsistent with the ethics of her office." *See*, Statement of Issues December 13, 2012. If the Appellant in their own argument uses this logic, then it is imperative that the Court, without factual evidence of misconduct, do the same when considering the allegation of impropriety relating to other SRMT Tribal officials.

Based upon this the Court does not agree that there was an improper relationship between the Respondent, and former SRMT Tribal Chief, Mr. L. David Jacobs, which benefited the Respondent in any way.

The issue of a necessary party or interested person who is missing from these proceedings was taken into great consideration by the Court. The Court has noted previously that in order to completely satisfy an equitable decision in this matter, the absence of Mr. Harvey E. Sawyer (Son) is an issue which must be addressed.

On two separate occasions Mr. Harvey E. Sawyer expressed his concern over the fact that the property known as Lot #237 was being sold, as he claims that this property was transferred to him by his parents, Mr. and Mrs. Harvey C. Sawyer in July or August of 1981. *See*, Statement on Mohawk Nation Council of Chiefs Letterhead by Mr. Harvey E. Sawyer July 15, 1997. The fact that this was never addressed by the SRMT LDT is what left this Court to address this issue.

The Court does not see in the record why this necessary party was absent from any of the proceedings either with the SRMT LDT, nor the St. Regis Mohawk Tribal Court. The Court does however recognize that Mr. Harvey E. Sawyer has a claim as an interested party in this case, and if he elects to do so, will be granted the opportunity to present his claim.



Therefore, the St. Regis Mohawk Tribal Court upholds that the SRMT LDT was correct in allowing for the "buy back" of a one (1) acre parcel of land by the Appellant, from the respondent. The execution of this option must comply with the terms that are outlined in the April 29, 1987 land sale agreement between Mr. and Mrs. Harvey C. Sawyer and Mr. Anthony Laughing.

The Court also upholds that the SRMT LDT was correct in determining that satisfactory compensation was made by the Respondent, Mr. Anthony Laughing, to the Complainant, Ms. Evelyn Sawyer, satisfying the monetary obligation of \$90,000 that was agreed to in the April 29, 1987 land sale agreement.

The Court does not uphold the SRMT LDT claim that the parcel of property Lot #237 and #238 contains 10.139 acre(s) as stated in their February 17, 2012 decision. As the Court previously discussed the original sale in 1948 by Ms. Elizabeth White to Mr. and Mrs. Harvey C. Sawyer only indicates that the property in question contains approximately nine (9) acre(s). It is only this nine (9) acre(s) that the Court accepts as being the entirety of the property known as Lot #237 and #238.

The Court finds that this decision and order only quiets the claim between the Appellant and the Respondent in this matter, and that it only addresses the nine (9) documented acre(s) this property contains. The Court leaves open the opportunity for Mr. Harvey E. Sawyer, the son of Mr. and Mrs. Harvey C. Sawyer to present his claim of ownership should he so wishes.

Entered by my hand this 25<sup>th</sup> day of August 2014



Peter J. Herne, Chief Judge St. Regis Mohawk Tribal Court

